and medical report pertaining to the accident. It speaks well of their experience, having had to deal with this type of cases before. They knew the precise cue; they knew what steps to take to prevent injury to them and protect themselves from any adverse consequences. They have not, however, said why they have not advised the insured what to do in the event of they being served with the writ. On the other hand, it is difficult to imagine that this is the way they would normally conduct themselves exposing them every time to the risk of the judgment being entered against them. The notice under section 80 was served on the company on December 20, 1973 but it was not until October 2 that they apparently served notice on their counsel. If they had done so only on June 8, 1974 then whose fault is it that they were prejudiced. They were delaying matters. The plaintiffs were only doing what was expected of them if they were forced to take the extreme measures. The defendant and insurer's conduct was consistent with being utterly negligent or else blatantly indifferent. For the court to lend its hand in aid would be at the expense of the plaintiff who had been at great pains to do all that needs to be done and who is not found to be in any way at fault. I think the objection of section 80 would be defeated if although they had notice, the defendant, nevertheless, can set aside a judgment simply because the writ had not been served on them when the rule does not require it, when clearly it is their duty to seek it from the defendant. It seems obvious that the purpose of section 80(2)(a) is to compel the insurance company as long as they know of an impending action to pay wherever judgment is entered against their insured. It is not concerned with how the judgment is obtained or how they came to know. It may be hard and unjust at times on the insurer but it would be harder and more unjust still on the innocent victims for whom they seek to protect, if the law is not so. It is imperative therefore on the part of the insurance company to seek their clients instead of waiting for them, if that is necessary for the protection of their interest.

I was referred to the case of *Johannes Koplan* v. *Aw Chen.*[2] Whatever the authority seeks to say it cannot be intended to mean that the insurer can set aside a judgment in any event. The case must be distinguished from the present one here. It was arrived at after a consent judgment by the parties to set aside the judgment. There the notice could not possibly be served because the defendant had gone abroad and there was no possibility of getting him. It was served on the defendant's counsel only not the defendant and the former did nothing to advise his client to take the necessary steps to ensure that the claim is heard on its merits. The situation here is just the reverse. The defendant was served with the writ and the notice was served not on the solicitors but on the company itself. In addition, the company's solicitors also had notice of the impending action.

I had a look at the sketch plan but without prejudicing my mind entirely by it, it clearly shows where the defendant was at the time of the accident.

In my view in a situation like this where the parties are fully aware of their rights and remedies and are open to take all the steps that are before them but did not but dragged their feet instead then it is only doing substantial justice to the parties if the utter laches and inaction of one is not made to pass at the expense of the other especially if the unfortunate circumstance and position of one calls for the extreme vigilance by the other. If they do not then it is only fair that they pay for their own default.

There has been a considerable delay for want of good reason and as Lord Camden said in *Smith* v. *Clay*[3] (see *Snell's* Principles of Equity, 25th Edition p. 31):

"A court of equity has always refused its aid to stale demands, where a party has slept upon his right and acquiesced for a great length of time. Nothing can call forth this court into activity, but conscience, good faith, and reasonable diligence; where these are wanting, the court is passive, and does nothing."

In the circumstances, I therefore, dismiss the intervener's application with costs.

Intervener's application dismissed.

Solicitors: *Richard Talalla & Co.; Mahmood Adam & Co.*

PUBLIC PROSECUTOR v. KEE AH BAH

[A.Cr.J. (Syed Othman J.) February 4, 1976]
[Johore Bahru — Criminal Appeal No. 59 of 1974]

Criminal Law and Procedure — Attempt at fraudulent evasion of export duty on tin ore — "Remote" acts and "immediate" acts — Principles governing acts of "attempt" — Customs Act, 1967, ss. 80, 88, 112 & 135(1)(e), (i).

Customs and Excise — Evasion of export duty — Attempt at — Customs Act, 1967, ss. 80, 88, 112 & 135(1)(e), (i).

On April 25, 1973, three customs officers were laying in wait at the export gate at the Johore Bahru Causeway for motor-car J.K. 3856. At about 5.30 p.m. the car was seen leaving the immigration check point and approaching the customs checkpoint. The first officer on seeing the car signalled the others to be on the alert. One was at the export gate near the check point, and the other was at the emergency gate which was further up the export gate and was about the beginning of the causeway leading to the border between Johore and Singapore in the middle of the causeway. The officer manning the emergency gate on being alerted closed the gate. The car was then about 10 yards from the check point. There were two cars ahead of it. The officer at this gate signalled the respondent who was driving to stop. But the respondent reversed and made a U-turn, ignoring the first officer's shout to stop. With a revolver in his hand, the officer leapt on to the bonnet of the moving car and tried to get into it by smashing the windscreen with his revolver. In the process, the revolver was thrown into the car and the officer off the car. The car got away through a gap in the kerb beside the road. The gap was after the immigration point leading to a road back to town. The car was later found and the respondent was taken to the police station. The revolver was recovered when the respondent led them to a spot where he had thrown it. The car was taken to customs and in it were found 21 bags of tin ore, 2 in the boot, 3 under the seat, and 16 in a special compartment between the back rest of the rear seat of the car and the engine. The car was a Volkswagon with an engine at the back.

The prosecution appealed against the acquittal of the respondent. The learned President held that the respondent had no case to answer on a charge of having been knowingly concerned in an attempt at fraudulent evasion of export duty on 21 bags of tin ore weighing 9.45 piculs, an offence under section 135(1)(e) and punishable under section 135(1)(i) of the Customs Act, 1967.

Held, setting aside the acquittal: (1) a person could only be convicted of an attempt to commit in the circumstances where the steps taken by him in order to commit the offence, if successfully accomplished, would have resulted in the commission of that offence;

(2) acts remotely leading to the commission were not to be considered as an attempt to commit but acts immediately leading to the commission of the offence or acts immediately connected with the commission of the offence constituted an attempt to commit that offence;

(3) the customs had the right to examine a vehicle after it left the immigration point, because after that point the traveller must be said to be in the course of leaving the country, and if he had the goods, then they were in the course of being exported;

(4) the remote acts, i.e. preparatory to or as showing intention to commit the offence, would be the making of the secret compartments in the car, the obtaining and loading of the tin-ore into the car, and the driving up to the immigration check point to present his travel documents;

(5) the immediate acts were that he was within the area of the customs check point; he failed to stop when called upon to do so; and he reversed the car and drove off;

(6) all the evidence, the immediate acts and the prevailing circumstances, considered as a whole, constituted the offence of attempt at fraudulent evasion of export duty.

Cases referred to:-

(1) *Houghton* v. *Smith* [1973] 3 All E.R. 1109.

(2) *Hope* v. *Brown* [1954] 1 All E.R. 330.

CRIMINAL APPEAL.

Abdul Murad bin Sheikh Ismail (Senior Federal Counsel) for the appellant.

R.K. Menon for the respondent.

Cur. Adv. Vult.

Syed Othman J.: The appeal is against the acquittal of the respondent. After hearing the prosecution, the learned President, Sessions Court at Johor Bahru, held that the respondent had no case to answer on a charge of having been knowingly concerned in an attempt at fraudulent evasion of export duty on 21 bags of tin ore weighing 9.45 piculs, an offence under section 135(1)(e) and punishable under section 135(1)(i) of the Customs Act, 1967.

The prosecution's case was as follows. On April 25, 1973, three customs officers were laying in wait at the export gate at the Johor Bahru Causeway for motor car JK 3856. At about 5.30 p.m. the car was seen leaving the immigration check point and approaching the customs check point. The first officer on seeing the car signalled the others to be on the alert. One was at what is described as the export gate near the check point, and the other was at the emergency gate which is further up the export gate and is about the beginning of the causeway leading to the border between Johor and Singapore in the middle of the causeway. The officer manning the emergency gate on being alerted closed the gate. The car was then about 10 yards from the check point. There were 2 cars ahead of it. The officer at this gate signalled the respondent, who was driving the car, to stop. But the respondent reversed and made a U turn. The first officer shouted to the respondent to stop but the respondent ignored him. With revolver in his hand, the officer leapt on to the bonnet of the moving car and tried to get into the car by smashing the windscreen with his revolver. In the process his revolver was thrown into the car and he himself off the car. The car got away through a gap in the kerb beside the road. The gap was after the immigration point and led to a road back to town. The three customs officers, after reporting the matter to a senior customs officer, went in a land rover to look for the car and the respondent. They came to a house in Jalan Kemaman where they found the car at the back of the house. The respondent was taken to the police station. The revolver was recovered when the respondent led them to a spot where he had thrown it. The car was taken to the customs and in the presence of the respondent it was searched. The 21 bags of tin ore was found in the car: 2 in the boot, 3 under the seat and 16 in a special compartment between the back rest of the rear seat of the car and the engine. The car was a Volkswagon with an engine at the back.

The main part of the learned President's grounds of judgment reads:

"Evidence showed that the accused turned back some 10 yards, and it could be more, from the Customs check point. For what reason he turned back is academic. The point is he was still in Malaysian territory. He would have shown his irrevocable intention to leave the country if he had already reached the Customs check point and not after he had left the immigration check point as there is nothing to prevent him after that to change his mind and turning back.

His driving towards the Customs check point and hence to Singapore certainly is an attempt on his part to leave the country. But leaving the country is not an offence here. In deciding this charge the point must also be considered whether his action amounted to an attempt at evasion of Customs duty. Assuming for instance that the Customs check point is the place where duty is paid (and there is no evidence to show where in fact duty is to be paid on goods to be taken out of the country) whether or not he attempted to pay duty or not much depends on what action he takes at the check point itself. If he did not stop at the check point when asked to by proper authority and dashed on for instance then clearly he had committed the offence. However in this case when the accused turned back he was quite a bit of distance from the check point. In fact there were several cars ahead of him. How can he be considered to have attempted to evade duty then. If that is so the Customs then could stop anyone going in the general direction of the causeway anywhere along Jalan Campbell and if he is found with goods which are dutiable on export be prosecuted for an attempt at evasion of Customs duty. Certainly not. Even though in the hypothesis the place is much further from the Customs check point than the place from where the accused in this case had turned back the principle is the same namely that the accused had not done anything to show that he was trying to evade to pay duty."

Later he said

"I do not think an ordinary member of the public would really know the place to pay duty on goods taken out of the country."

In regard to this, section 80 of the Customs Act, 1967 prescribes the duty of the exporter of goods. Setting down what is only relevant to the present case it reads:

"(1) Every exporter of dutiable goods shall immediately before export —

(a) personally or by his agent make, in the prescribed form and to the officer of customs specified in sub-section (2), a declaration of the goods to be exported;

(b) produce such goods to such officer at any place as the officer may direct;

(c) pay the export duty and any other charge leviable thereon to such officer.

xxx xxx xxx

(2) The declaration referred to in paragraph (a) of sub-section (1) shall be made to the proper officer of customs at the appropriate place specified hereunder that is to say—

xxx xxx xxx

(c) at the place of export if export is by road.

xxx xxx xxx

Sub-sections (3) and (4) provide:

(3) The declaration referred to in paragraph (a) of sub-section (1) shall give a full and true account of the number and description of packages and of the description, weight, measure or quantity, and value of all such dutiable goods, and the country of destination of such goods.

(4) No dutiable goods shall be removed from the place at which such goods were produced to the officer of customs in accordance with sub-section (1) unless permission in that behalf has first been obtained from a senior officer of customs."

From these provisions it is clear that the duty lies on the exporter or agent to make his declaration at the place of export before exporting. The defence in cross-examination of prosecution witness did not raise the point that the respondent did not know where to pay duty. I do not therefore think it was proper for the court to speculate that a member of the public would not know where to pay duty. In any case, if what the learned President said can be correct at law, then to illustrate similar situations, any person who is summoned to appear before the court may be excused for not attending if he says that he does not know where the court house is; he may also be excused from paying taxes because he does not know where the tax office is. In the ordinary course of human conduct, if a person does not know where the court house or where to pay tax or where to pay duty on goods to be exported he should enquire. In the present case, the law puts the duty on the exporter or his agent before exporting to make declaration in the prescribed form, to produce the goods and to pay duty to the proper officer of customs at the proper place. In the case of Johor Bahru, it is a notorious fact that at present the place to pay duty on goods to be exported is at the inner end of Jalan Campbell about half a mile from the customs check point at the Causeway.

In arguing on attempt, I am grateful to Encik Menon, for the respondent, for having referred me to the following English authorities.

In *Houghton* v. *Smith*[1] — the facts of the case as appearing in headnote are as follows.

"A quantity of goods was stolen from a firm in Liverpool. Some days later a van travelling south was stopped by the police; it contained stolen goods. It transpired that the van was proceeding to a rendezvous with the accused in Hertfordshire where the accused was to make arrangements for the disposal of the goods in the London area. In order to trap the accused the van was allowed to proceed on its journey with two policemen concealed inside and a disguised policeman beside the driver. At the rendezvous the van was met by the accused and at least one other person and the accused thereupon began to play a prominent role in assisting in the disposal of the van and its load. Finally the trap was sprung and the accused and others were arrested. The prosecutor was of the opinion that, once the police had taken charge of the van, the goods had been restored to lawful custody, within section 24 of the Theft Act 1968, and were, therefore, no longer stolen goods. Accordingly the accused was not charged with handling 'stolen goods', contrary to section 22 of the 1968 Act, but with attempting to handle stolen goods."

The main principles decided by the House of Lords in this case may be put briefly: (a) a person could only be convicted of an attempt to commit in the circumstances where the steps taken by him in order to commit the offence, if successfully accomplished, would have resulted in the commission of that offence; (b) Since the goods which the accused had handled were not stolen goods, as conceded by the prosecution, he could not be convicted of attempting to commit the offence of handling stolen goods. In my view principle (a) applies to the present case; (b) does not, as the status of the goods in the case, as conceded by the prosecution, had altered from having been "unlawful" (i.e. Stolen) goods to "lawful" i.e. goods which had been restored to lawful custody. In the present case, the status of the tin ore had not changed. It remained dutiable throughout.

In the case *Hope* v. *Brown*,[2] I need only concern myself with the principles enunciated by Lord Goddard C.J. at pages 331-332.

"The only question is whether or not the respondent can be convicted of an attempt to sell meat in respect of each of these twenty-one customers to whom he intended that the meat should be delivered the next day. Does what he had done amount to an attempt? In my opinion it does not. The mere intention to commit an offence means that an act has been done preparatory to the commission of the offence. The *locus classicus* on what amounts to be an attempt is *R.* v. *Eagleton* (24 L.J.M.M.C. 166 in which Parke B. said:

'Some act is required, and we do not think all acts towards committing a misdemeanour indictable. Acts remotely leading towards the commission of the offence are not to be considered as attempts to commit it, but acts immediately connected with it are....'

In the present case, what remained to be done before there could be an attempt was the affixing to the meat of the false tickets. Until that was done, in my opinion, the matter remained simply what I may call in embryo and in intention."

The principles to be noted in this case are that acts remotely leading to the commission are not to be considered as an attempt to commit but acts immediately leading to the commission of the offence or acts immediately connected with the commission of the offence constitute an attempt to commit that offence. In the present case, the completed offence which would have been committed was fraudulent evasion of export duty. An attempt to commit such offence, having regard to its nature, must be assessed with a somewhat different light. If the offence had been completed, in the sense contemplated by the trial court, the offender would have been over the border and out of reach of the customs, and in all probability the goods would have been disposed of. Under present conditions, what is considered to be smuggling by one country would be considered to be trading by a neighbouring country; what is dutiable on export here, may not be dutiable on import there; what is prohibited here may be permitted there. For the purpose of trade, I do not think one country is much concerned with the customs laws of another.

From his grounds of judgment, the learned President seemed to be of the mind that since the respondent was still within the Malaysian territory, before there could be an attempt at fraudulent evasion of export duty there must have been 2 ingredients (1) an irrevocable intention to leave the country; (2) what I would describe as a further step by the respondent to commit the completed offence.

As regards (1) irrevocable intention to leave the country, he said there would have been such intention if the respondent had reached the customs check point. By way of fortifying his findings he said:

"... an innocent traveller carrying dutiable goods could drive right to the check point either to declare his goods and pay duty... or he could drive up to the check point to enquire from the officers where to pay the duty. It is clear therefore that the intention of the motorist whether lawful or unlawful cannot be determined until he has actually reached the check point itself."

I fail to see the necessity for dividing an intention into irrevocable and, impliedly, revocable. On the learned President's finding there is nothing to prevent a person from turning back even after leaving the customs check point, as the boundary is much further ahead. Under ordinary circumstances, a person must be said to have the intention to leave the country when he reaches the immigration check point and presents his travel documents, and if there is no immigration check point, when he is seen heading towards the border. The fact that he may change his mind about leaving the country later on, does not detract from his original intention. It is not for the court to speculate on what an innocent traveller would have done. The purpose of the customs check point after the immigration point, as the very name itself signifies, is merely to check whether any exporter of goods has complied with section 80 of the Act, i.e. whether he has paid duty to the proper officer at the appropriate place after making a declaration in the prescribed form. Considering the requirements of law, I am of the opinion that when the goods are being taken to the customs check point, the exporter is in fact in the course of exporting the goods.

Section 88 sets out the exemption from declaration. The exemption which apply to the exports by road as far as I can see are accompanied passengers' baggage or personal effect and fresh fish locally taken. Considering these provisions, I think it must be said for the customs department that customs officers at various check points, have exercised a lot of latitude to travellers who export or import goods not in strict compliance with the requirements of law.

As regards (2) — further step — the learned President was of the mind that there must be evidence that the respondent had dashed on without stopping at the customs check point. Now the evidence shows there were 2 cars ahead of the respondent's and the customs had also closed the emergency gate. If indeed the respondent could have got over the cars ahead of him or through the closed emergency gate, he could have easily got to the other end of the causeway. Then the question of attempt does not arise. The offence of fraudulent evasion would have been completed.

The question whether or not the customs have the right to examine vehicles along the whole stretch of Jalan Campbell is not relevant to the present case. What should have been considered were the acts of the respondent after leaving the immigration check point. On the evidence, he must have had the intention to leave the country, when he presented his travel documents at the immigration check point. When he left the immigration check point he came into the area of customs check point. To my mind, the customs have the right to examine a vehicle after it leaves the immigration point, because after this point the traveller must be said to be in the course of leaving the country, and if he has goods, then they are in the course of being exported. It is common knowledge that in order to facilitate travellers customs officers, and I can see nothing in law which prevents them from doing so, check many vehicles or persons at the same time. Section 112 of the Act gives the right to customs officers to examine goods in the course of being imported or exported. It reads:

"Any proper officer of customs may examine any goods in the course of being imported or exported or intended to be imported or exported and may for the purposes of such examination bring the same to a customs office and may open any package or receptacle."

In the present case, the remote acts (referred to in *Hope* v. *Brown, supra*) i.e. preparatory to or as showing intention to commit the offence, would be the making of the secret compartments in the car, the obtaining and loading of the tin ore into the car, and the driving up to the immigration check point to present his travel documents. After the immigration, the goods were at law in the course of being exported. As indicated earlier, the offence in the present case must be assessed in a different light. *Hope* v. *Brown, supra*, spoke of immediate acts or acts immediately connected with attempt. In the context of the present case, regard must be had to the prevailing circumstances, i.e. the nature of the goods, the nature of the conveyance or vehicle, and the location of the goods on the person or in the conveyance. In the present case, these were the prevailing circumstances; when the respondent left the immigration point, he had in the car tin ore which was later found mostly in secret compartments in a vehicle not intended to carry tin ore; (perhaps it would have been another matter if he had goods which could have been seen by the customs easily on cursory examination); the car was a Volkswagon designed to carry 4 passengers, not a load of 9.45 piculs of tin ore, equivalent to the weight of not less than 10 Asian passengers; he had no documents to show that he was permitted to export tin ore; he had no documents to show that duty on the tin ore had been paid. The immediate acts were: He was within the area of the customs check point; he failed to stop when called upon to do so; then he reversed the car and drove off. The very fact that he had the tin ore in secret compartments in a small car goes to show that he expected the customs officers to believe that he was carrying no goods in the car. If in fact he ever had the intention to pay duty or to make enquiries where to pay duty, as suggested in the grounds of judgment, then it was all the more reason for him to have stopped. The respondent's acts in reversing the car, not heeding the signal and the call of the customs officer for him to stop, in getting the car into the gap and then in continuing to drive the car in spite of the adventurous feat of the customs officer to stop him, were to retrieve himself from the immediate acts. They also show that the respondent knew that he could not complete the commission of the offence i.e. of fraudulent evasion of the duty, as the customs men were ready for him. All the evidence, the immediate acts and the prevailing

circumstances, considered as a whole, to my mind constitute the offence of attempt at fraudulent evasion of export duty.

As to the gap which lies between the immigration check point and the customs check point, I should think that it is meant to facilitate those travellers in vehicles who in good faith change their mind about leaving the country after the immigration check point, or who have no proper travel documents and are ordered by the immigration officers not to leave the country. It is a notorious fact that vehicles get into the immigration point in lanes, and ordinarily it is not possible for a vehicle which has got into a lane to reverse because of vehicles at the rear. The gap is intended for such vehicles. It is not intended to provide an escape route for a prospective smuggler, who has a change of heart on finding that he cannot dodge the customs at the check point.

The very finding of the learned President that the respondent should have taken a further step i.e. dashing on without stopping at the customs check point shows that the prosecution's evidence as it stood falls within principle (a) in *Houghton's case* indicated above. If the further step had been accomplished, the question of attempt does not arise as the offence of fraudulent evasion would have been completed, whether or not the offender reaches the border, as in this event the respondent would have got over the customs without declaring the goods.

I would also like to touch on one point. Towards the end of the grounds of judgment the learned President considered the following evidence by the investigation officer when he questioned the respondent:

"Accused told me that he had left the tin in the car earlier and went on to work. In the evening he decided to go to Singapore in the car. Accused told me that after he had passed the immigration check point he remembered about the tin. He then decided to turn back."

The learned President remarked:

"How could this not have possibly happened. Is it totally improbable that that was the reason why the accused turned back. The fact that he failed to stop in the circumstances does not make his story absolutely convincing but then the accused is not required to assert anything beyond a reasonable doubt."

To this, I need only say that it is understandable if a person forgets small items of goods left in the car. But it is much too heavy a test on the credulity of an ordinary person that anyone could have forgotten 9.45 piculs of tin ore in a small car. Anyway, it was the court's finding that the respondent's story was not absolutely convincing. I fail to see then that it could still entertain reasonable doubt.

The grounds of judgment show that the trial court dealt with most of the evidence in isolation, and then equated such evidence with hypothetical questions based on situations which have little bearing on the evidence to be considered.

I hereby order that the acquittal be set aside and the case be tried before another President.

Acquittal set aside.

Solicitors: *R.K. Menon & Co.*

BANK BUMIPUTRA MALAYSIA BHD. v. YEOH HO HUAT

[O.C.J. (Ajaib Singh J.) April 28, 1977]
[Malacca — Civil Suit No. 122 of 1972]

Torts — Fraud — Deceit — Fraudulent valuation — Land valued at $64,768.20 sold for only $7,600 — Valuer had no honest belief in truth of false statements in his valuation report — Reliance on said valuation by plaintiffs/bankers in advancing loan — Duty of care owed to plaintiffs — Damages.

Valuer — Valuation — Fraudulent valuation — Valuer had no honest belief in truth of false statements in his valuation report — Reliance on said valuation by plaintiffs/bankers in advancing loan — Duty of care owed to plaintiffs — Damages.

The plaintiffs in this case were bankers having their registered office in Kuala Lumpur with a branch office in Malacca. The defendant was a licensed appraiser and valuer having his place of business in Malacca. In November 1967 one Ali applied for a loan which was to be secured by a charge on his land. A valuation report by a licensed valuer was to be submitted to the plaintiffs before the loan could be approved. The defendant valued the said land at $64,768.20 and the plaintiffs in reliance on the said valuation report approved the application of the said Ali for the loan. The land was charged to the plaintiffs to secure the payment of $20,000 plus interest. On Ali's default to pay the loan, the plaintiffs applied to the Collector of Land Revenue for an order for the said land to be sold under the provisions of the National Land Code. The sale was conducted twice but there were no bidders at these two sales at or above the reserve price of $7,600. The land was finally sold to one Baharuddin for $7,600.

The plaintiffs sued the defendant for damages allegedly caused by a fraudulent valuation by the defendant as a valuer in respect of the said land.

Held, allowing the plaintiffs' claim: (1) an action of deceit would lie at the instance of any person who had acted on the fraudulent report of a valuer;

(2) there was no contractual relationship between the plaintiffs and the defendant with regard to the valuation report yet it was abundantly clear from the evidence that the defendant was aware that his report was intended to be acted upon and he thereby owed a duty to any person who so acted upon the report;

(3) the defendant had no honest belief in the truth of the false statements in his valuation report. He had made the false statements knowingly and recklessly without caring whether they were true or false;

(4) the plaintiffs' reliance on the said report had resulted in their advancing the loan to one A and they thus suffered damage as the land was eventually sold for the true value of $7,600 as against the value put in the report at $64,768.20.

Cases referred to:-

(1) *Derry* v. *Peek* (1889) 14 App. Cas. 337.
(2) *Cann* v. *Willson* (1888) 39 Ch. D. 39.
(3) *Le Lievre* v. *Gould* [1893] 1 Q.B. 491.
(4) *Hedley Byrne & Co. Ltd.* v. *Heller & Partners Ltd.* [1964] A.C. 465.

CIVIL SUIT.

A.K. Bashir for the plaintiffs.

Ong Boo Kok for the defendant.

Cur. Adv. Vult.

Ajaib Singh J.: The plaintiffs in this case sued the defendant for damages allegedly caused by a fraudulent valuation by the defendant as a valuer in respect of three pieces of land held under E.M.R. Lot Nos. 23, 27 and 28 in Town Area XXXII containing a total area of 4 acres 3 roods 33 poles.